

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
LTE Wireless Inc.)	WCB/Pricing File No. 20-01
June 12, 2020)	
Access Charge Tariff Filing,)	Transmittal No. 1
Tariff F.C.C. No. 1)	

ORDER

Adopted: June 25, 2020

Released: June 25, 2020

By the Chief, Pricing Policy Division:

I. INTRODUCTION

1. On June 12, 2020, LTE Wireless Inc. filed Transmittal No. 1 (the proposed Tariff) as a competitive local exchange carrier (LEC) to undertake to “furnish switched or dedicated access communications service pursuant to the terms of this tariff.”¹ The proposed Tariff is defective in many respects. The legal deficiencies in the proposed Tariff include: (i) pricing provisions that violate the Commission’s *USF/ICC Transformation Order* and related benchmarking rules; and (ii) dispute resolution provisions that would impose unjust and unreasonable terms on LTE Wireless’s customers.² Because the proposed Tariff fails to comply with the Communications Act of 1934, as amended (Act), including the just and reasonable requirements under section 201(b), and Commission precedent and rules, we reject it in its entirety.

II. DISCUSSION

2. The Communications Act grants the Commission authority to review tariff filings to ensure they comply with the Act and with the Commission’s rules and orders.³ The United States Court of Appeals for the District of Columbia Circuit has explained that the Commission has “the power and in some cases the duty” to reject a tariff that is demonstrably unlawful on its face, or that conflicts with a

¹ Letter from Carey Roesel, Consultant, Inteserra Consulting Group, to Marlene Dortch, Secretary, Federal Communications Commission, Transmittal Letter for Tariff F.C.C. No. 1, Transmittal No. 1 (filed June 12, 2020) (Transmittal); *see also* LTE Wireless, Inc. Tariff F.C.C. No. 1 (filed June 12, 2020), Section 2.1.1 (LTE Wireless Tariff F.C.C. No. 1).

² *See Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), *aff’d sub nom, In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2050, and 135 S. Ct. 2072 (2015) (*USF/ICC Transformation Order*); 47 U.S.C. § 201(b). In rejecting the proposed Tariff, we identify two of the proposed Tariff’s most significant defects. We do not, however, attempt to catalog all of the ways in which the proposed Tariff is defective.

³ 47 U.S.C. § 204.

statute or with an agency regulation or order.⁴ We rely on this authority to reject the proposed Tariff in its entirety.

3. *Violations of the benchmarking rules.* To offer service as a competitive LEC, LTE Wireless must benchmark its rates for switched access services, including its tandem-switched transport rates, to those of the competing incumbent LEC pursuant to section 61.26(b) of the Commission's rules.⁵ According to the proposed Tariff, most of LTE Wireless's rates would be benchmarked to the rates of various price cap carriers.⁶ Under the Commission's rules, price cap LECs may not charge tariffed rates greater than zero for "terminating tandem-switched access service traversing a tandem switch that the terminating carrier or its affiliate owns."⁷ Sections 3.8.1 through 3.8.8 of LTE Wireless's proposed Tariff, which contain rates for tandem switching and transport services benchmarked to price cap carriers, do not distinguish between calls from the LTE Wireless tandem that are terminated by LTE Wireless (which should list a rate of zero) and calls that are terminated by a third-party (which can list a rate greater than zero).⁸ LTE Wireless includes only a non-zero rate in these sections of the proposed Tariff.⁹ As such, LTE Wireless's proposed Tariff fails to properly implement the Commission's benchmarking rule and accordingly, is rejected.¹⁰

4. *Unjust and unreasonable dispute resolution provisions.* Sections 2.10.4(A)¹¹ and 2.10.4(B)¹² of the proposed Tariff contain dispute resolution provisions.¹³ Section 2.10.4(A) provides that

⁴ *Associated Press v. FCC*, 448 F.2d 1095, 1103 (D.C. Cir. 1971); *see also Municipal Light Bds. v. FPC*, 450 F.2d 1341, 1346 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 989 (1972) (finding that the Commission may reject a tariff filing if the filing is "so patently a nullity as a matter of substantive law, that administrative efficiency and justice are furthered by obviating any docket at the threshold rather than opening a futile docket."); *Capital Network Sys., Inc. v. FCC*, 28 F.3d 201, 204 (D.C. Cir. 1994); *American Broadcasting Cos. v. FCC*, 663 F.2d 133, 138 (D.C. Cir. 1980).

⁵ 47 CFR § 61.26 (b); *see also id.*, § 61.26 (d).

⁶ LTE Wireless Tariff F.C.C. No. 1, § 3.8.

⁷ *See* 47 CFR §§ 51.907(h); *see also Level 3 Communications, LLC v. AT&T Inc.*, Memorandum Opinion and Order, 33 FCC Rcd 2388, 2389, para. 2 n.4 (2018) (*Level 3 Order*) (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-35, para. 801, Figure 9).

⁸ *Compare, e.g.,* LTE Wireless Tariff F.C.C. No. 1, §§ 3.8.1.C-E *with* BellSouth Telecommunications LLC, Tariff F.C.C. No. 1, § 6.8.1 (the proposed Tariff lists former BellSouth as the price-cap carrier to which the rates in this section of the LTE Wireless tariff are benchmarked (LTE Wireless Tariff F.C.C. No. 1 § 3.8.1)).

⁹ LTE Wireless Tariff F.C.C. No. 1, §§ 3.8.1 – 3.8.8.

¹⁰ *See, e.g., USF/ICC Transformation Order*, 26 FCC at 17937-38, paras. 807-08. The proposed tariff also raises several other substantial concerns, including questionable terms and conditions, as well as seemingly incorrect references to competing incumbent LEC tariffs and rates not found in cited benchmark tariffs. *See, e.g.,* LTE Wireless Tariff F.C.C. No. 1 § 3.8.8 (citing "Frontier Telephone Companies (Oregon – FCC No. 5)," however, Frontier Tariff F.C.C. No. 5 does not cover any operating territory in Oregon); LTE Wireless Tariff F.C.C. No. 1 §§ 3.8.2 – 3.8.4 (containing trunk port rates that do not appear in the cited benchmark tariffs).

¹¹ LTE Wireless Tariff F.C.C. No. 1, § 2.10.4(A). Section 2.10.4(A) provides in part:

All bills are presumed accurate and shall be binding on the Customer unless written notice of a good faith dispute is received by the Company. For the purposes of this Section, "notice of a good faith dispute" is defined as written notice to the Company's contact within a reasonable period of time after the invoice has been issued, containing sufficient documentation for the Company to investigate the merits of the dispute, including the account number under which the bill has been rendered, the date of the bill, and the specific items on the bill being disputed. . . . A separate letter of dispute must be submitted for each and every individual bill that the Customer wishes to dispute.

invoiced charges are “binding” unless a customer wishing to dispute a bill submits written “notice of a good faith dispute” to LTE Wireless “within a reasonable period of time.”¹⁴ Section 2.10.4(B) prohibits a customer from withholding payment of disputed charges pending a resolution of the parties’ dispute, except in the limited circumstance when a customer is billed for a volume of calls that is different than the volume of calls it originated or terminated.¹⁵

5. We find that sections 2.10.4(A) and (B) of the proposed Tariff are unjust and unreasonable provisions that violate section 201(b) of the Act.¹⁶ First, section 2.10.4(A) of the proposed Tariff does not define what constitutes “a reasonable period of time” after an invoice has been issued. As a result, customers taking service under the proposed Tariff cannot determine with certainty when a notice of a dispute will be considered timely. Section 61.2(a) of the Commission’s rules requires all tariffs to contain “clear and explicit explanatory statements regarding the rates and regulations” to “remove all doubt as to their proper application.”¹⁷ The word “reasonable” is vague and would be subject to numerous interpretations, in violation of section 61.2 of the Commission’s rules and section 201(b) of the Act. Further, section 2.10.4(A) of the proposed Tariff contravenes section 201(b) of the Act because the provision can be interpreted as unilaterally and impermissibly shortening the two-year statute of limitations set forth in section 415(b) of the Act.¹⁸

6. Similarly, section 2.10.4(B) of the proposed Tariff violates section 201(b) of the Act because it is an unjust and unreasonable term. In *Sprint v. Northern Valley*, the Commission found a tariff provision requiring “all disputed charges to be paid ‘in full prior to or at the time of submitting a good faith dispute’” to be unreasonable.¹⁹ Such a provision, the Commission said, would require every customer that receives a bill for access services to pay it, “no matter what the circumstances ... in order to dispute a charge.”²⁰ Here, the proposed tariff language is nominally different, in that it includes a limited exception for the narrow circumstance when the dispute is that the volume of calls billed does not reflect the volume of calls originated or terminated by the customer, but suffers from the same basic flaw that the

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¹² LTE Wireless Tariff F.C.C. No. 1, § 2.10.4(B). Section 2.10.4(B) provides in part:

This is a pay-and-dispute tariff which provides, generally, that an entity that has sent or received Interstate telecommunications traffic to the Company should pay the invoiced charges, rather than engaging in self-help withholding. Therefore, payment for any undisputed amounts shall be tendered without delay. Further, charges corresponding to the volume of Interstate telecommunications traffic sent to or received from the Company’s network shall also be tendered without delay, reduction, or offset. Thus, withholding is only permitted by this tariff if a good faith dispute alleges that the Company has billed charges for a volume of Interstate access traffic that exceeds the volume of Interstate access traffic actually originated or terminated to the Company’s network during the billing period.

¹³ LTE Wireless Tariff F.C.C. No. 1, § 2.10.4(A).

¹⁴ *Id.*

¹⁵ *Id.* at § 2.10.4(B).

¹⁶ 47 U.S.C. § 201(b).

¹⁷ 47 CFR § 61.2(a).

¹⁸ *See* 47 U.S.C. § 415(b).

¹⁹ *Sprint Commc’ns Co. v. N. Valley Commc’ns, LLC*, Memorandum Opinion & Order, 26 FCC Rcd 10780, 10787 (2011) (*Sprint v. Northern Valley*), review denied, *N. Valley Commc’ns, LLC v. FCC*, 717 F.3d 1017 (D.C. Cir. 2013) (*Northern Valley v. FCC*)).

²⁰ *Id.*

Commission addressed in *Sprint v. Northern Valley*.²¹ Accordingly, we find that the dispute resolution provision is unjust and unreasonable, and contravenes the Act and Commission precedent.

III. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 201(b), 204, and 415 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201(b), 204, and 415; sections 51.907 and 61.26(b) of the Commission's rules, 47 CFR §§ 51.907, 61.26(b); and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, that the proposed LTE Wireless, LLC Tariff F.C.C. No. 1, Transmittal No. 1, IS HEREBY REJECTED.

8. IT IS FURTHER ORDERED that, pursuant to section 61.69 of the Commission's rules, 47 CFR § 61.69, LTE Wireless, LLC SHALL FILE a supplement within five business days from the release date of this order noting that this proposed transmittal was rejected in its entirety by the Federal Communications Commission.

FEDERAL COMMUNICATIONS COMMISSION

Gil M. Strobel
Chief, Pricing Policy Division
Wireline Competition Bureau

²¹ LTE Wireless Tariff F.C.C. No. 1, § 2.10.4(B).